

## AGREEMENT

This Agreement (the "Agreement") is made by and between the City of Sugar Land, Texas (the "City"); Cherokee Sugar Land, L.P. ("Cherokee") and Cherokee Investment Partners III, L.P. ("Guarantor") to provide the terms and conditions by which certain property described on Exhibit "A" (the "Property") comprising Tract "3" will be acquired by the City and a portion of such Property will be conveyed to Cherokee.

### I. THE PARTIES

- A. City. The City is a home rule municipality located in Fort Bend County, Texas. The office of the City is located at 2700 Town Center Boulevard North, Sugar Land, Texas 77479. The principal officer of the City for purposes of this Agreement will be Allen Bogard, City Manager, telephone (281) 275-2710, facsimile (281) 275-2721.
- B. Cherokee. Cherokee is a Delaware limited partnership with its principal office located at 105 East 6<sup>th</sup> Street, Suite 900, Austin, Texas 78701. The principal officer of Cherokee for the purpose of this Agreement shall be Kyndel W. Bennett, who can be reached at 105 East 6<sup>th</sup> Street, Suite 900, Austin, Texas 78701. (512) 322-5328, facsimile (512) 322-5301.
- C. Guarantor. Guarantor is a Delaware limited partnership with its principal office located at 702 Oberlin Road, Suite 150, Raleigh, North Carolina 27605. The principal officer of Guarantor for the purpose of this Agreement shall be Robert Naylor, who can be reached at 702 Oberlin Road, Suite 150, Raleigh, North Carolina 27605, (919) 743-2543, facsimile (919) 743-2501.

### II. AGREEMENT REGARDING TRACT "3"

- A. Tract "3". The Property is presently owned by the State of Texas through the Texas General Land Office and School Land Board for the use and benefit of the Permanent School Fund. The Property is adjacent to the Imperial site as shown on Exhibit "A". Cherokee has stated that the Property is necessary to the financial feasibility of the redevelopment of the Imperial site, a historic site of importance in the City. The City is willing to facilitate Cherokee's investigation and acquisition of the Property as part of Cherokee's plan to redevelop the Imperial site and develop the Property, provided that the City bears no costs for its efforts therefor and that the City receives the consideration provided herein.
- B. Acquisition of the Property. The City and Cherokee agree to proceed with the acquisition of the Property by the City and conveyance of an

agreed portion of the Property to Cherokee pursuant to the process described in Exhibit "B."

- C. Purchase Agreement. The City shall consult with Cherokee regarding the terms and conditions of a purchase agreement between the City and the State of Texas for the purchase of the Property prior to the approval and execution of such purchase agreement (the "Purchase Agreement"). The City agrees that the City will not enter into the Purchase Agreement for the Property unless Cherokee has approved such agreement, and Cherokee acknowledges that the Purchase Agreement must be approved by the City Council. The City will not be obligated to enter into the Purchase Agreement until Cherokee has delivered by wire transfer to the City any earnest money or other payment required under the Purchase Agreement at least three (3) days prior to the City's execution of the Purchase Agreement. In the event Cherokee fails to deposit such funds with the City as provided herein, the City shall have the option not to execute the Purchase Agreement and to terminate this Agreement without any further obligations or liability to Cherokee. If such agreement has already been signed, the City shall have the right refuse to perform under the Purchase Agreement without any further obligations or liability to Cherokee. In such event, Cherokee will indemnify and hold the City harmless from any damages accruing to the City which arise out of the City's negotiating and/or entering into the Purchase Agreement with the State. Contemporaneously with the execution of the Purchase Agreement by the City, Cherokee shall provide the City with a bank set-aside letter, letter of credit or other form of financial guarantee in a form satisfactory to the City, evidencing Cherokee's financial ability to perform under the Purchase Agreement and Subsection E below.
- D. City Obligations. The City agrees that the City will not sell or otherwise convey the entirety or any portion of the Property to anyone other than Cherokee or Cherokee's designee, provided that Cherokee is not in default of this Agreement and this Agreement remains in full force and effect. The City and Cherokee agree to work together in good faith to negotiate and approve the terms and conditions for the conveyance of an agreed portion of the Property to Cherokee from the City (the "Agreed Portion"), including the portion which will be conveyed to Cherokee, which terms and conditions must be included in an agreement approved and executed by both parties. If the parties fail to reach agreement on such terms and conditions, either party shall have the right to terminate this Agreement on five (5) days written notice to the other.
- E. Closing on the Property. The closing on the Property will occur pursuant to the terms of the Purchase Agreement, provided that all the conditions precedent described in Section III below have occurred.

Simultaneous with the closing of the Property, the agreed portion of the Property will be conveyed to Cherokee. The City shall provide Cherokee with a closing statement, and the City agrees not to close on the Property without (1) Cherokee's approval of the closing statement and (2) Cherokee's deposit with the City by wire transfer of all sums to be paid at the closing as well as all other sums due from Cherokee to the City at such time. Cherokee shall deliver to the City not less than three (3) business days prior to closing, the funds necessary to close on the Property as well as all other sums Cherokee owes to the City at that time. The City shall not have any obligation to close on the Property in the event the conditions precedent described herein and in Section III have not taken place.

- F. City Procedures. Cherokee acknowledges that the City Council must approve one or more budget amendments to allow for the acceptance of funds from Cherokee and the expenditure of those funds in accordance with this Agreement and that such approval of City Council must occur prior to the wire transfer of funds from Cherokee provided for in paragraphs C and E.
- G. Costs. Cherokee agrees to pay all third party costs associated with the City's performance under this Agreement including, but not limited to, earnest money, the purchase price of the Property, legal fees, title fees, appraisal fees, soils testing fees, taxes (if any), and closing costs. The City agrees to submit to Cherokee for approval proposals for such costs, except for the City's legal fees, and to submit for approval any material change to these costs. Cherokee hereby authorizes the City to incur up to \$15,000 in legal fees without further approval being required. Cherokee agrees (1) to pay the City within 15 days of receipt of an invoice from the City for costs and (2) to pay such costs directly to the vendor in accordance with the term of such obligation upon receipt of a request from the City to make such direct payment. The City will advise Cherokee when its legal fees reach the agreed level, and Cherokee will then authorize additional legal fees. If Cherokee does not authorize additional legal fees or pay all costs timely, the City will not be obligated to continue with its work on the acquisition of the Property, and the City shall have the right to terminate this Agreement.

### III. CITY CONDITIONS PRECEDENT TO CLOSING

Cherokee acknowledges that the City will not agree to close on the Property and convey the Agreed Portion to Cherokee unless certain issues regarding the development of the Property and the Imperial site have been agreed to by the City and Cherokee. The following sets out the conditions precedent to the City's closing hereunder; however, Cherokee acknowledges nothing in this Agreement is intended nor shall be considered to obligate the City to enter into

any of the agreements set out below, as all such agreements will be the subject of separate negotiation. Only upon completion of the following conditions precedent to the closing will the City be obligated to close on the Property:

- a. Portion to be conveyed to Cherokee – Final Approval and execution by both parties of an agreement providing for the terms and conditions under which the City will transfer the Agreed Portion of the Property to Cherokee;
- b. General Land Plan Approval – Final approval by the City of a general land plan for the Property;
- c. City Development Agreement – Final approval and execution of an agreement between the City and Cherokee providing the terms and conditions upon which the Project may be developed, including a commitment on the part of the City as to zoning in accordance with the approved General Land Plan;
- d. Utility Agreement – Final approval and execution of a Utility Agreement for utilities to serve the Property;
- e. Designation of a Tax Increment Reinvestment Zone to include all land to be included within the development;
- f. Approval of a Final Project Plan and Plan of Finance for the tax increment reinvestment zone; and
- g. Payment of all fees owed by Cherokee to the City up to the date of closing.

The City acknowledges that there are many issues that Cherokee must investigate and address in performing its due diligence as to the acquisition of the agreed portion of the Property and that Cherokee may find during this process that it is not advisable for Cherokee to acquire the agreed portion of the Property. Therefore, the parties agree that Cherokee shall have the right to terminate this Agreement at any time, with or without cause, upon five (5) days written notice to the City. Cherokee will have no liability for exercising its right of termination hereunder other than those set out in Sections II (A), II(C), II(E), II(G), IV (H), and IV (I)) hereof. Further, the City agrees to refund to Cherokee within sixty (60) days of termination all prepaid expenses that remain unexpended at the time of termination and all refunded earnest money, if any.

#### **IV. MISCELLANEOUS PROVISIONS**

- A. Governing Law. This Agreement and the legal relationship between the City and Cherokee pursuant to this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas.
- B. Assignment. Cherokee shall not assign this Agreement or any portion hereof, or delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law or otherwise, without the City's consent, which consent shall be granted

only in the City's sole discretion. Notwithstanding the foregoing, Cherokee may, without prior notice to the City, cause an "Affiliate" to perform any duties or obligations of Cherokee hereunder, provided that such action does not relieve Cherokee of such duties and obligations. Affiliates shall include any joint venture, partnership or other business entity or activity formed by Cherokee or any entity controlled by, controlling or under common control with Cherokee.

- C. Notices. Any notice, demand or other communication which may be desired or required pursuant to this Agreement shall be in writing and shall be deemed given if and when personally delivered, or upon delivery if sent by telecopy with a confirmation of receipt, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to the City or to Cherokee at the addresses set forth in Sections I(A) or I(B) respectively, of this Agreement, or to such other addresses as the City or Cherokee may designate by notice. Copies of notices to Cherokee and the City shall also be given to the following persons:

Allen Boone Humphries Robinson LLP  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027  
Attn: Joe B. Allen

McDonald & Sechrist LLP  
P. O. Box 16819  
Sugar Land, Texas 77469  
Attn: Jeanne H. McDonald

- D. Indemnity. **CHEROKEE AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD THE CITY, ITS AGENTS, EMPLOYEES AND OFFICIALS (COLLECTIVELY, THE "CITY") HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTERESTS, ARISING FROM, IN CONNECTION WITH OR INCIDENTAL TO THE PERFORMANCE OF THE CITY HEREUNDER, CHEROKEE'S PERFORMANCE OR BREACH OF THIS AGREEMENT AND THE ACQUISITION AND OWNERSHIP OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ACTIVITIES RELATED TO THE ACQUISITION OF THE PROPERTY, SUCH AS SOILS TESTING, APPRAISALS, AND ENVIRONMENTAL STUDIES, EXCEPT TO THE EXTENT SUCH CLAIMS ARISE FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. THIS INDEMNITY SHALL INCLUDE CHEROKEE'S AGREEMENT TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES AND EXPENSES THAT MAY ARISE FROM THE CITY'S OWNERSHIP OF THE AGREED PORTION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS ON THE AGREED**

**PORTION. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

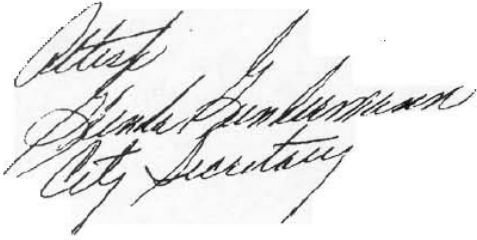
- E. Survival. In the event of termination, Cherokee's indemnity obligations and obligations to make payments to the City and for City third party costs incurred to the date of termination will survive such termination.
- F. Guarantee. Guarantor hereby guarantees performance and payment of all duties and obligations of Cherokee hereunder. Guarantor agrees to cause all such duties and obligations of Cherokee to be performed and paid within fifteen (15) days of receipt of notice from the City that Cherokee has failed to perform any duty or obligation hereunder. Notwithstanding the foregoing, in no event shall the aggregate liability of Guarantor to the City (as defined in Section IV.D above) pursuant to the terms of this Agreement exceed the sum of Five Million Dollars (\$5,000,000); provided, however, that in the event that the City determines prior to the conveyance of the Agreed Portion to Cherokee that a guarantee by Guarantor in excess of Five Million Dollars (\$5,000,000) is required to protect fully the interests and exposure of the City, the City may request that Guarantor provide an additional guarantee on terms and conditions and in an amount satisfactory to the City in its sole discretion. If Guarantor fails to provide such additional guarantee within ten (10) business days after a written request therefor from the City, the City may then elect to terminate this Agreement and shall be relieved of all further liability or obligations hereunder. Furthermore, before the City's execution of the Purchase Agreement, the Guarantor shall add the City and Cherokee as additional insureds to Guarantor's general liability insurance policy to insure against liabilities arising from or in connection with the activities of the City and Cherokee related to the acquisition of the Property. The limits of such policy shall not be less than \$1,000,000 per occurrence, \$2,000,000 in aggregate plus a \$25,000,000 umbrella policy.
- G. Term and Termination. This Agreement will terminate on December 31, 2006. The City shall have the right to terminate this Agreement and recoup any costs owed by Cherokee hereunder upon occurrence of the following:
- i. Failure by Cherokee to pay timely any monies due hereunder;
  - ii. Failure by Cherokee to accept title to the portion of the Property to be conveyed as provided in this Agreement;
  - iii. Failure by the Guarantor to provide a further guarantee if requested by the City pursuant to the terms of Section IV (F) above; or

- iv. Breach by Cherokee of any of its obligations hereunder and failure to cure within 5 days after receipt of notice of such breach from the City.

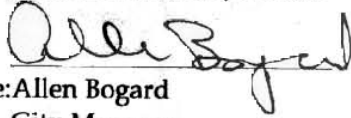
Cherokee shall have the right to terminate this Agreement at any time, with or without cause, upon five (5) days written notice to the City.

[Signature page follows]

Agreed to this 21 day of June, 2005. Cherokee, Guarantor and the City have executed this Agreement in multiple copies, each of which is an original.



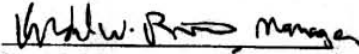
CITY OF SUGAR LAND, TEXAS

By:   
Name: Allen Bogard  
Title: City Manager

CHEROKEE SUGAR LAND, L.P.,  
a Delaware limited partnership

By: Verturo Sugar Land, L.P.  
its General Partner

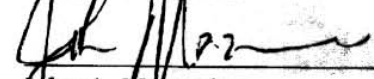
By: Verturo Sugar Land, LLC  
its General Partner

By:   
Kyndel Bennett, Manager

CHEROKEE INVESTMENT PARTNERS III, L.P.  
a Delaware limited partnership

By: Cherokee Investors III, L.P.  
its General Partner

Cherokee Investors, LLC  
its General Partner

  
John A. Mazzarino  
Managing Member

ATTACHMENTS

Exhibit A - The Property

Exhibit B - Tract "3" Acquisition Process



**EXHIBIT A**  
**THE PROPERTY**

**EXHIBIT B**  
**PERMANENT SCHOOL FUND TRACT 3**

Telephone Conversation with Jeff Boudreau, General Land Office  
Thursday, April 7, 2005

<p style="text-align: center;"><b>Potential Direct Sale Process</b>  <i>Permanent School Fund Tract 3</i></p>		
<b>Process Step:</b>	<b>Anticipated Completion Date:</b>	<b>Notes/Status:</b>
A new appraisal is in the process of being ordered through the State's Chief Appraiser's Office.	Approximately One Week	
New Appraisal is conducted	30 – 45 days and submitted to Chief Appraiser's Office	<i>Time may depend on utilizing previous appraiser or new.</i>
Chief Appraiser Review	One Week	
Information provided/discussed with City of Sugar Land		<i>The actual appraisal is not provided. The GLO will discuss minimum price with the City to determine if the City would like to proceed.</i>
Letter from City of Sugar Land requesting the School Land Board consider a direct sale to the City at a price to be agreed upon		
Direct Sale request placed on School Land Board docket		<i>Lead Time is two weeks</i>

School Land Board Meeting		<i>Land Board has three options:</i> <ol style="list-style-type: none"> <li>1. <i>Commit to a direct sale</i></li> <li>2. <i>Reject direct sale request and direct an open bid process</i></li> <li>3. <i>Determine not to sell the property at this time</i></li> </ol>
Purchase Request Form/Closing on Property		<i>Depends on Purchase Agreement. Can happen quickly or can allow "option" timeframe.</i>

## Notes:

The General Land Office does make a recommendation to the State Land Board regarding the Direct Sale and price.

The State Land Board can do an "option" or "purchase agreement" for a direct sale, i.e. to provide buyer due diligence/contract negotiations for specified timeframe. An example was with Newland for 1 year. Tract 1 will be closing this summer.

Previous purchase agreements have included a 1% fee at bidding. At the award approval the balance up to 5% was requested. The initial 1% is considered non-refundable should either party determine that the sale should not occur.